United States Department of Labor
Employees' Compensation Appeals Board

T.T., Appellant	)	
	)	**Docket No. 17-1060**
and	)	**Issued: December 19, 2017**
	)	
U.S. POSTAL SERVICE, JENNINGS BRANCH POST OFFICE, St. Louis, MO, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On April 19, 2017 appellant filed a timely appeal from a February 21, 2017 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.[2]

ISSUE

The issue is whether appellant has established that she sustained greater than eight percent permanent impairment of the left arm for which she previously received a schedule

[1] 5 U.S.C. § 8101 *et seq.*

[2] Appellant submitted new evidence accompanying his request for appeal. The Board may not consider new evidence for the first time on appeal that was not before OWCP at the time it issued the final decision in the case. Thus, it is precluded from reviewing this evidence for the first time on appeal. 20 C.F.R. § 501.2(c)(1).

award and whether she has established permanent impairment of her right arm, warranting a schedule award.

FACTUAL HISTORY

OWCP accepted that on April 19, 2014 appellant, then a 43-year-old carrier technician, sustained multiple contusions, bilateral calcifying tendinitis of the shoulders, right shoulder adhesive capsulitis, and traumatic bilateral carpal tunnel syndrome when another vehicle collided with the rear of appellant's postal truck, causing it to roll over three to four times. Appellant was transported to a hospital emergency room immediately after the accident. Bilateral shoulder x-rays and numerous imaging studies were negative for fracture or dislocation. Appellant was hospitalized through April 21, 2014. She remained off work.[3] OWCP paid appellant wage-loss compensation beginning June 27, 2014 for temporary total disability.

In a July 7, 2014 report, Dr. Frank V. Thomas, an attending Board-certified orthopedic surgeon, diagnosed left shoulder pain, likely muscular in etiology, with possible rotator cuff and biceps tendinitis.[4] A July 6, 2014 left shoulder MRI scan was negative.

Dr. F. Duane Turpin, an attending Board-certified neurologist, first examined appellant on August 18, 2014. He related appellant's complaints of continuing left shoulder girdle and arm pain. On examination, Dr. Turpin found give way weakness in the left arm due to pain. He performed electromyography (EMG) and nerve conduction velocity (NCV) testing on August 25, 2014, which demonstrated bilateral carpal tunnel syndrome. On September 29, 2014 Dr. Turpin diagnosed bilateral carpal tunnel syndrome. He attributed appellant's left shoulder pain to musculoskeletal discomfort unrelated to a mild C5 radiculopathy.

In an October 28, 2014 report, Dr. William Feinstein, an attending physician Board-certified in orthopedic surgery and hand surgery, reviewed a history of injury and treatment. He diagnosed bilateral carpal tunnel syndrome and adhesive capsulitis of the left shoulder. Dr. Feinstein explained that the accepted April 19, 2014 motor vehicle accident caused an acute, severe worsening of previously quiescent bilateral carpal tunnel syndrome. He administered a left shoulder injection on November 20, 2014 and prescribed physical therapy for left shoulder adhesive capsulitis.

On December 9, 2014 Dr. Feinstein performed an open left carpal tunnel release, authorized by OWCP. He submitted periodic reports noting that appellant was recovering well but continued to experience left shoulder pain from adhesive capsulitis.

A January 23, 2015 left shoulder arthrogram showed a superior labrum anterior and posterior (SLAP) tear of the glenoid labrum with minimal supraspinatus insertional tendinopathy.

[3] Appellant received medical management nurse services from an OWCP field nurse.

[4] Appellant participated in physical therapy May 2014 to July 2015. The results of a June 27, 2014 magnetic resonance imaging (MRI) scan of the cervical spine was normal.

On February 18, 2015 Dr. Feinstein performed an open right carpal tunnel release, authorized by OWCP. He discharged appellant from care for bilateral carpal tunnel syndrome effective April 1, 2015.

On April 15, 2015 Dr. Feinstein performed a left SLAP lesion repair with arthroscopic distal clavicle excision, biceps tenodesis, and subacromial decompression. OWCP approved the procedure. Dr. Feinstein held appellant off work through May 27, 2015, noting that she had made substantial gains in strength and mobility.

Appellant returned to light-duty work on May 30, 2015 for six hours a day. OWCP paid appellant wage-loss compensation for the remaining hours. Appellant returned to full-time limited duty on July 9, 2015.

In an August 5, 2015 report, Dr. Ryan Pitts, an attending physician Board-certified in orthopedic surgery and sports medicine, noted some limitation of internal rotation of the left shoulder, and negative drop arm, apprehension, sulcus, and O'Brien's tests. He diagnosed status post SLAP debridement of the left shoulder with biceps tenodesis, and bilateral carpal tunnel syndrome with bilateral releases. Dr. O'Brien opined that appellant had attained maximum medical improvement (MMI). He noted permanent restrictions against lifting more than 30 pounds, and more than 5 pounds above shoulder level. Dr. O'Brien noted the same findings and diagnoses in a February 24, 2016 report.

On March 15, 2016 an OWCP medical adviser reviewed the medical evidence of record and a statement of accepted facts (SOAF). Referring to the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (hereinafter, A.M.A., *Guides*),[5] he opined that appellant had 10 percent impairment of the left arm due to distal clavicle resection according to Table 15-5,[6] with no adjustments for grade modifiers. The medical adviser noted that he was unable to assess any permanent impairment of the wrists as the record lacked Dr. Feinstein's postoperative notes or occupational therapy reports.

In a March 28, 2016 report, Dr. Pitts noted that appellant's hands were "giving her problems again," with numbness, and "sharp shooting pains that radiate from the fingertips to the elbows." On examination, he observed no abnormalities of either hand or wrist. Dr. Pitts referred appellant for repeat electrodiagnostic studies.

On August 25, 2016 appellant claimed a schedule award (Form CA-7).

In an August 29, 2016 letter, OWCP notified appellant of the additional evidence needed to establish her claim, including a report from her physician supporting that she had reached MMI, the diagnosis on which the permanent impairment is based, a detailed description of the impairment, and an impairment rating based on the sixth edition of the A.M.A., *Guides*. Appellant was afforded 30 days to submit such evidence.

[5] 6th ed. 2009.

[6] Table 15-5, page 401-05 of the sixth edition of the A.M.A., *Guides* is titled "Shoulder Region Grid: Upper Extremity Impairments."

On February 5, 2017 an OWCP medical adviser reviewed the medical record and SOAF. Referring to the sixth edition of the A.M.A., *Guides*, he assessed a grade 1 Class of Diagnosis (CDX) impairment rating of the left shoulder using Table 15-5. The medical adviser found a grade 1 modifier for Functional History (GMFH) due to pain or symptoms with overhead activities, a grade modifier for Physical Examination (GMPE) findings of zero as appellant had no instability or tenderness on palpation, and a grade modifier for Clinical Studies (GMCS) of zero as the July 16, 2014 MRI scan did not confirm the SLAP lesion diagnosis. Applying the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), or (1-1) + (0-1) + (0-1), he calculated a grade modifier of -2, moving the default grade of C two spaces to the left, resulting in a class A impairment, equaling eight percent permanent impairment of the left upper extremity.

Regarding bilateral carpal tunnel syndrome, OWCP's medical adviser assessed a class 1 CDX according to Table 15-2, for a history of painful injury with residuals symptoms. He found a GMFH, GMPE, and GMCS of zero as appellant had no complaints of wrist pain, palpatory findings, or "relevant imaging studies." Applying the net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), or (0-1) + (0-1) + (0-1), the medical adviser calculated a grade modifier of -2, moving the default grade of C two spaces to the left, resulting in a class A impairment, equaling zero percent permanent impairment of both upper extremities.

By decision dated February 21, 2017, OWCP issued appellant a schedule award for eight percent permanent impairment of the left arm. It further found that she had no permanent impairment of the right arm. The period of the award, equivalent to 24.96 weeks, ran from August 5, 2015 to January 26, 2016.

LEGAL PRECEDENT

The schedule award provisions of FECA[7] provide for compensation to employees sustaining impairment from loss or loss of use of specified members of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the sound discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by OWCP as a standard for evaluation of schedule losses and the Board has concurred in such adoption.[8] For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition of the A.M.A., *Guides*.[9]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability

[7] 5 U.S.C. § 8107.

[8] *Bernard A. Babcock, Jr.*, 52 ECAB 143 (2000).

[9] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5a (February 2013); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

and Health (ICF).[10] Under the sixth edition, the evaluator identifies the impairment CDX, which is then adjusted by grade modifiers based on GMFH, GMPE, and GMCS.[11] The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).

ANALYSIS

OWCP accepted that appellant sustained multiple contusions, calcific tendinitis of both shoulders, right adhesive capsulitis, and traumatic bilateral carpal tunnel syndrome in an April 19, 2014 motor vehicle accident. It authorized a left open carpal tunnel release on December 9, 2014, a right open carpal tunnel release on February 18, 2015, and an April 15, 2015 SLAP lesion repair with arthroscopic distal clavicle excision, biceps tenodesis, and subacromial decompression. Dr. Feinstein performed the surgeries.

Dr. Pitts, an attending physician Board-certified in orthopedic surgery and sports medicine, found that appellant had reached MMI as of August 5, 2015, with limited internal rotation of the left shoulder and no signs or symptoms of carpal tunnel syndrome. Appellant had a recrudescence of bilateral hand numbness and paresthesia, for which she consulted Dr. Pitts on March 28, 2016. Dr. Pitts recommended but did not obtain repeat electrodiagnostic testing.

Appellant claimed a schedule award on August 25, 2016. OWCP obtained an impairment rating on February 5, 2017 from an OWCP medical adviser, based on the sixth edition of the A.M.A., *Guides.* Regarding the left shoulder, he found a grade 1 CDX according to Table 15-5, a GMFH of 1 due to symptoms with overhead activities, and no applicable grade modifiers for physical findings or clinical studies. Application of the net adjustment formula yielded a grade modifier of -2, moving the default grade of C two spaces to the left, resulting in eight percent permanent impairment of the left arm.

For the wrists, the medical adviser found a class 1 CDX for carpal tunnel syndrome of both extremities according to Table 15-2, with no applicable grade modifiers. The net adjustment formula of (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), or (0-1) + (0-1) + (0-1), resulted in a grade modifier of -2, moving the default grade of C to class A impairment, equaling zero percent permanent impairment of both upper extremities. OWCP then issued the February 21, 2017 schedule award for eight percent permanent impairment of the left arm, with no impairment of either upper extremity due to carpal tunnel syndrome.

The Board finds that OWCP's medical adviser applied the proper tables and grading schemes of the A.M.A., *Guides* to the medical evidence of record. The medical adviser provided mathematically correct calculations supported by detailed rationale, explaining why appellant had eight percent permanent impairment of the left arm due to an arthroscopic distal clavicle resection. He also explained why appellant had no impairment of either arm due to carpal tunnel syndrome, as there was no objective evidence of postsurgical neurologic abnormality.

[10] A.M.A., *Guides* (6th ed. 2009), page 3, Section 1.3, "The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement."

[11] A.M.A., *Guides* (6th ed. 2009), pp. 494-531.

Therefore, OWCP's February 21, 2017 schedule award determination is appropriate under the facts and circumstances of the case.

On appeal appellant disagrees with OWCP's February 21, 2017 decision finding no permanent impairment of either arm attributable to the accepted bilateral carpal tunnel syndrome. She asserts that her history of bilateral carpal tunnel releases entitled her to a schedule award. The medical evidence of record does not establish a ratable impairment of either upper extremity attributable to carpal tunnel syndrome.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not established that she sustained greater than eight percent permanent impairment of the left arm for which she previously received a schedule award and that she has not established a right arm permanent impairment for purposes of a schedule award.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated February 21, 2017 is affirmed.

Issued: December 19, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board